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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

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No. ~~1210~~ 100

PETER KLOPFER,

Petitioner,

—v.—

STATE OF NORTH CAROLINA,

Respondent.

MOTION OF THE AMERICAN CIVIL LIBERTIES UNION AND THE AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA FOR LEAVE TO FILE A BRIEF AS *AMICI CURIAE* AND BRIEF *AMICI CURIAE* IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI

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No. 1216

PETER KLOPFER,

Petitioner,

—v.—

STATE OF NORTH CAROLINA,

Respondent.

MOTION FOR LEAVE TO FILE A BRIEF AS *AMICI CURIAE*

The American Civil Liberties Union and the American Civil Liberties Union of North Carolina respectfully move for leave to file a brief as *amici curiae* in this case.

Petitioner has consented in writing to the filing of this brief. The State of North Carolina, respondent, following what the applicant understands to be the routine practice of the Attorney General's office, has refrained from either consenting or objecting to the filing of such brief.

The interest of the American Civil Liberties Union is two-fold: the general interest it holds as a civil liberties organization, and, more specifically, a belief that justice requires at a minimum that this case be heard on its merits.

Since its founding in 1920, the American Civil Liberties Union has sought to prevent and to redress violations of civil liberties protected by the Constitution through litiga-

tion, educational programs, public statements and petitions to the Government. Its intention has never been to further the interest of any special group, but rather to defend the civil liberties of all persons equally. The American Civil Liberties Union hopes that an argument presented by an organization both experienced and specially concerned with maintaining constitutionally guaranteed liberties may be of aid to the Court in its adjudication of the sensitive issues raised by this case.

Amici move for leave to file this brief for two specific reasons:

a. The harm resulting to petitioner and to other criminal defendants whose prosecutions may be indefinitely continued by the granting of *nol. pros.* with leave, and similar devices, warrants the fullest possible exposition of the serious and novel constitutional issues raised by these practices.

b. The unqualified availability of *nol. pros.* with leave, by its presence, its broad application by the solicitor, and its excessively permissive use by the State Supreme Court, is a substantial threat to the free expression of unpopular beliefs and ideas. This issue demands extensive analysis.

We fear that the parties may not fully address themselves to the above issues. We believe our brief will aid the Court by emphasizing these aspects of the litigation. If our arguments were accepted, they would be dispositive of this case.

Respectfully submitted,

MELVIN L. WULF
Attorney for Movant

Questions Presented

1. May a State through its criminal procedure empower the solicitor to suspend a criminal proceeding without explanation or cause and to reinstitute the prosecution at any time, without providing any standards for the solicitor to follow, and thus deny to the accused a speedy trial of the charges pending against him in violation of the Sixth Amendment as made applicable to the States through the Fourteenth Amendment to the Constitution?

2. May a State employ a procedure in a criminal trial the effect of which is necessarily to punish and to stigmatize a person indirectly for that which the State could not otherwise punish him, thus denying Petitioner due process of law?

3. May a State through its criminal procedure give its solicitor the absolute discretion to suspend or try a criminal offense once the indictment has issued, when the necessary effect of such power may discourage or stifle the free expression of unpopular ideas and beliefs protected by the First Amendment?

Statement of the Case

On February 24, 1964, petitioner, Professor Peter Klopfer, was indicted for criminal trespass, punishable by imprisonment for as long as two years. The trespass was alleged to have taken place when he and others, seeking nondiscriminatory service in a place of public accommodation, sought access to the cafe premises of Austin Watts, Chapel Hill, North Carolina. Petitioner pleaded "not guilty" at his trial in March, 1964. After due deliberation upon all the evidence, the jury was unable to reach a verdict. Thereupon the Court withdrew a juror and entered an order of mistrial. Petitioner's case was not retried during any subsequent Criminal Session that year.

Shortly thereafter, but one year after the original mistrial, the solicitor advised petitioner's attorney of his intention to move the Court for a *nol. pros.* with leave. Thereupon, petitioner, through his attorney, opposed in open court at the April, 1965, Criminal Session the entry of such motion in petitioner's case. The solicitor then stated that he wished to retain petitioner's case in its trial docket status.

Petitioner's case was not listed for trial during the August, 1965, Criminal Session. The Court, in response to petitioner's motion seeking ascertainment of the status of his case, inquired into the matter in open court. At that time the solicitor moved the Court for a *nol. pros.* with leave, but without explanation as to why it was appropriate to continue its case. The motion was granted. Petitioner objected and took exception to the entry.

On appeal to the North Carolina Supreme Court the entry of *nol. pros.* with leave was affirmed, *State* v. *Klopfer*, 145 S. E. 2d 909 (1966).

Interest of the *Amici*

We respectfully refer the Court to the preceding motion for leave to file this brief wherein the interest of the American Civil Liberties Union as *amici curiae* is set forth at length.

ARGUMENT

I.

The *nol. pros.* with leave, giving the solicitor the naked power to suspend a criminal prosecution or to reinstitute said prosecution at any time thereafter, denies petitioner his right to a speedy trial of the charges pending against him in violation of the Sixth Amendment as made applicable to the States through the Fourteenth Amendment to the Constitution.

a. The *Nol. Pros.* With Leave: Its Nature and Its Use.

North Carolina G. S. 15-175 is the State's *nol. pros.* statute. However, it is not clear either from the record or from the opinion of the North Carolina Supreme Court, whether the State, in petitioner's case, invoked this statute or some common law legacy. In either case, the effect is the same. As judicially interpreted, this procedure gives local solicitors, on behalf of the State, practically unlimited power to determine the disposition and course of pending

criminal prosecutions. Once an indictment has issued, the solicitor has the authority to move for the entry of *nol. pros.* with leave, without any showing of cause. Upon the granting of the motion by the Court, the solicitor then is empowered either to forestall trial of the cause for however long he wishes or to reinstitute prosecution at any time thereafter. No standards are imposed upon his discretion either by statute or by case law. *State* v. *Thompson*, 10 N. C. 613 (1825); *State* v. *Buchanen*, 23 N. C. 59 (1840); *State* v. *Thornton*, 35 N. C. 258 (1852); *State* v. *Moody*, 69 N. C. 529 (1893); *State* v. *Furmage*, 250 N. C. 623, 109 S. E. 2d 563 (1959). The solicitor is equally free, once *nol. pros.* with leave has been entered, to reinstitute the prosecution. He does not have to show cause; he need only apply to the clerk of the court to have a capias issued as a matter of right. *Wilkinson* v. *Wilkinson*, 159 N. C. 265, 266-267, 74 S. E. 740, 741 (1912); *State* v. *Klopfer*, 145 S. E. 2d 909, 910 (1966). Whichever course the solicitor chooses to pursue, his will is the moving force.

If the solicitor reinstitutes prosecution of a trial that has been halted under the *nol. pros.* with leave procedure, he may do so at any time, however remote from the date of the indictment, without running afoul the two year statute of limitations generally applicable to misdemeanors. N. C. Gen. Stat. 15-1. When an indictment first issues, the statute of limitations stops running. It does not begin running again when the *nol. pros.* with leave is entered, but remains suspended indefinitely. *State* v. *Williams*, 151 N. C. 660, 65 S. E. 908 (1909).

Not only does the *nol. pros.* with leave procedure enable the solicitor to delay or bar prosecution indefinitely, but

the criminal defendant, under indictment for a misdemeanor, is without means to bring his cause to trial to secure his opportunity for exoneration. Unlike the solicitor, he cannot set his case for trial. Nor can he find antidotal relief in either the Constitution or General Statutes of North Carolina. Once the solicitor has suspended the trial by taking a *nol. pros.* with leave, the defendant is without hope of a speedy trial unless the solicitor promptly changes his mind and decides to reinstate the prosecution. The fortune of the defendant thus rests entirely with the will of the solicitor.

A number of jurisdictions have acknowledged the threats to the fair administration of justice inherent in such procedure as that followed in this case. Forty-three states afford the criminal defendant constitutional guarantee of a speedy trial in all criminal prosecutions. See Appendix 1, 2, post. In addition, nine states guarantee this right by statute. See Appendix 4, post. Beyond these general and only partly efficacious provisions, approximately one-third of the states also have seen fit altogether to abolish *nol. pros.* expressly by statute, or have greatly reduced its entry by the prosecution. See Appendix 5, post. Several states have placed the sole power for its entry in the court. See Appendix 6, post.

North Carolina has no guarantee of a speedy trial in its constitution. And even though it has some language to the effect that justice shall be administered " . . . without sale, denial, or delay," N. C. Const. art. 1, §35, this language has never been interpreted by its courts to require a prosecutor to indicate why *nol. pros.* with leave would not deny or delay justice in a particular case. See Appendix 3, post. It has never been used to limit the use of *nol. pros.* with leave. The

only meaningful protection against delay that North Carolina affords its criminally accused is found in N. C. Gen. Stat. 15-10, applicable only to incarcerated felons. See Appendix 4, post. The State offers no relief from delay, however unreasonable, to one who has been indicted for a misdemeanor.

Such a condition of state law exerts very forceful pressure upon every criminal defendant in a misdemeanor prosecution who would otherwise plead "not guilty" and immediately join issue, knowing full well that whatever the outcome he could eventually resume his normal life, free from anxiety and future jeopardy. But the defendant who must frame his plea under the threat that the prosecutor may indefinitely delay the trial of his cause through the discretionary *nol. pros.* with leave, lacks this measure of opportunity and security. Knowing that he has no assurance of a prompt trial and that he will be subject to prosecution at any time in the future, he is under extreme pressure to forgo his cause and to plead guilty. If the state's procedure cannot guarantee the security of a speedy trial, even upon minimum standards of promptness, and in its stead vests such power in the solicitor as does the *nol. pros.* with leave procedure, then the criminal defendant is simply deprived of his right to defend himself without jeopardizing his job, his family, his standing, and reputation in the community.

This is the plight of petitioner who has been two years under indictment. He remains "neither innocent nor guilty," but without doubt, to all the community, accused and indicted. The solicitor has denied Professor Klopfer a speedy trial upon the charges—an opportunity to establish his innocence, to recover his dignity and to be free of the specter

of future prosecution. The solicitor has greatly interfered with petitioner's ability to schedule lecture and speaking tours outside North Carolina in his capacity as Professor of Zoology at Duke University. He has, in effect, snared Professor Klopfer in a web of uncertainty. Of only one thing can petitioner now be sure: he will remain in jeopardy for the rest of his life, subject indefinitely to the power of the solicitor or his successors to reinstate prosecution.

b. The Right to a Speedy Trial: History and Policy Considerations.

The right to a speedy trial is of long standing. Its basic nature is disclosed by its deep roots in the early common law. It was first given effect in the Magna Carta where it was written "To no one will we sell, to no one deny or delay, right or justice." This provision was subsequently implemented by special writs of jail delivery and later by commissions of jail delivery under which special judges emptied the jails twice each year and either convicted and punished the prisoners or set them free. II Coke Inst. 43. In 1679 Parliament passed the Habeas Corpus Act, 31 Car. II, Ch. 2, which required that prisoners indicted for treason or felony be tried at the next sessions or be released on bail. That Act, which Blackstone called "the Bulwark of the British Constitution", 4 Commentaries 438, was still cherished by the British people at the time our Constitution was adopted, Hale's History of the Common Law, p. 87 et seq (5th ed.) and by American patriots and lawyers nurtured on Blackstone. Some believed that the right to a speedy trial and other similar rights were so clearly a part of our "liberty" that no Bill of Rights was neces-

sary. THE FEDERALIST, No. 84. But to be sure that these and other fundamental rights would be preserved to the People, the first nine Amendments were added to the Constitution; and the right to a speedy trial was given first place among the rights in the Sixth Amendment. In time, most of the states adopted the language or policy of the Sixth Amendment into their own constitutional or statutory schemes. See Appendix, 1, 2, 4, post.

The policies underlying the right to a speedy trial are now, as they were in Blackstone's England, the embodiment of realistic concern for the rights of the accused in a free society. This policy has two equally significant aspects: the desire to protect the individual from the indignity, harassment and anxiety of an unresolved arrest and indictment, *Ex parte Pickerill*, 44 F. Supp. 741, 742 (N. D. Tex. 1942); and the grave concern that the individual, because of delay, will be denied the fair administration of justice. This latter aspect of the policy recognizes that the value of a speedy trial is that it best preserves to the defendant the means of proving his case. *United States* v. *Ewell*, 86 S. Ct. 773, 776 (1966); *Fouts* v. *United States*, 253 F. 2d 215, 217 (6th Cir. 1958); *United States* v. *Chase*, 135 F. Supp. 230, 232 (E. D. Ill. 1955).

In its concern for the accused as an individual, the policy is not narrow. When a defendant pleads that he has been denied a speedy trial, it is not necessary for him to stipulate that he is incarcerated or even that he has been or will be demonstrably prejudiced by the delay. *United States* v. *Lustman*, 258 F. 2d 475, 477 (2d Cir. 1958), cert. denied 358 U. S. 880 (1958); *Ex Parte Pickerill*, 44 F. Supp. 741, 742 (N. D. Tex. 1942). But this is not to say that one is less subject to the disabilities attending a long delay merely

because he is not held in custody. Of equal importance is the fact that he is subject to anxiety and concern over the possible disposition of the indictment pending against him, and that he must indefinitely continue to entertain grave doubts about his future security. To require that the defendant be incarcerated to raise the issue of delay would place an intolerable burden upon the exercise of a constitutional right and would undermine its several policies.

The importance of the speedy trial of criminal offenses in a democratic society derives not only from its need to protect the accused, but equally to protect the public order. The societal interest in security demands speedy trial, for this facilitates both effective prosecution of criminals and greater deterrence to potential criminals.

c. The Right to a Speedy Trial: Its Application to the States Through the Fourteenth Amendment.

Federal courts have sometimes suggested that the Sixth Amendment guarantee to a speedy trial is not directly or fully applicable to the states through the Due Process Clause of the Fourteenth Amendment. *In re Sawyer's Petition*, 229 F. 2d 805, 812 (7th Cir. 1956). This does not mean, however, that the state defendant is entirely without the equivalent of specific Sixth Amendment protection. Language bearing upon this issue points up that the Fourteenth Amendment protects the state defendant against the denial of a speedy trial to the extent that such denial is inconsistent with fundamental due process. *Mattoon* v. *Rhay*, 313 F. 2d 683, 684-685 (9th Cir. 1963); *Odell* v. *Burke*, 281 F. 2d 782, 787 (7th Cir. 1960); *Hastings* v. *McLeod*, 261 F. 2d 627 (9th Cir. 1958) (per curiam); *New York* v. *Fay*, 215 F. Supp. 653, 655 (S. D. N. Y. 1963);

Gordon v. *Overlade*, 135 F. Supp. 577, 578 (N. D. Ind. 1958). In recent years, the Supreme Court, demonstrating forthright concern for the rights of the accused, has broadened that understanding of due process. To that end the Court has brought within the scope of Fourteenth Amendment protection those safeguards in the first nine Amendments fundamental to ". . . the very essence of a scheme of ordered liberty." *Palko* v. *Connecticut*, 302 U. S. 319, 325 (1937). Speaking for the Court in *Gideon* v. *Wainwright*, 372 U. S. 335, 341 (1963), Mr. Justice Black has pointed out that there are ". . . ample precedents for acknowledging that those guarantees of the Bill of Rights which are fundamental safeguards of liberty immune from federal abridgment are equally protected against state invasion by the Due Process Clause of the Fourteenth Amendment." The Court has more recently sharpened this point, emphasizing that ". . . since [*Gideon*] it no longer can broadly be said that the Sixth Amendment does not apply to state courts." *Pointer* v. *Texas*, 380 U. S. 400, 406 (1965). To remove any doubts about where the Court stands on this issue, it has observed: ". . . [i]n the light of *Gideon*, *Malloy* [*Malloy* v. *Hogan*, 378 U.S. 1 (1964)], and other cases cited in these opinions . . . the statements made . . . that "the Sixth Amendment does not apply to the states *can no longer be regarded as the law*" [emphasis added]. *Pointer* v. *Texas*, 380 U. S. 400, 406 (1964),

The thrust of *Gideon*, *Malloy*, *Pointer* and similar recent cases has been to assure the accused a fundamentally fair trial in the state courts by incorporating into the Fourteenth Amendment Due Process Clause those safeguards in the Bill of Rights essential to the fair protection of the criminally accused. *Jackson* v. *Denno*, 378 U. S. 368

(1964); *Escobedo* v. *Illinois*, 378 U. S. 478 (1964). This protection is subverted and undermined if a state may indefinitely delay any trial without reason, until the efficacy of the accused's defense has been debilitated by the ravages of time and he has been obliquely punished by the stigma of his arrest and indictment. Such deliberate procrastination undercuts the possibility of having a fair trial, having repose from the threat of prosecution, and having an opportunity for exoneration.

The *nol. pros.* with leave procedure, which in practice and in this case grants the solicitor the unfettered power to delay a trial indefinitely, and which, in fact, has permitted the delay of petitioner's trial for two years, will not wash in the wake of standards of fundamental fairness. Due process demands that every accused have a fair trial, which necessitates, as a minimum, as prompt a trial as the fair administration of justice will allow. *Shepard* v. *United States*, 163 F. 2d 974, 976 (8th Cir. 1947). Time does not recognize jurisdictional boundaries. Wherever the situs, the ingredients of a fair trial blend in the same way. Unreasonable delay is inimical to the rights of the accused wherever the forum. *United States* v. *McWilliams*, 69 F. Supp. 812, 814 (D. D. C. 1946); *United States* v. *Fay*, 313 F. 2d 620, 623 (2d Cir. 1963); *State of Maryland* v. *Kurek*, 233 F. Supp. 431, 432 (D. Md. 1964).

Four factors have generally been regarded as relevant in determining whether the denial of a speedy trial has assumed due process proportions: the length of the delay; the reason for the delay; the prejudice to the accused; and waiver by the accused. *United States* v. *Simmons*, 338 F. 2d 804, 807 (2d Cir. 1964).

In the instant case, approximately two years have elapsed since the indictment issued against petitioner. So far as the *nol. pros.* with leave procedure is concerned, it may continue indefinitely—entirely at the discretion of the solicitor. *Wilkinson* v. *Wilkinson*, 159 N. C. 265, 266-267, 74 S. E. 740, 741 (1912).

The State failed to suggest any reason for further delay of the trial, at the time it took advantage of the availability of the *nol. pros.* with leave. In view of the fact that one trial on the indictment had already been completed, that the alleged incident had occurred locally, that the witnesses were few in number and close at hand, it is not surprising that the solicitor offered no reason to continue this proceeding. Indeed, the North Carolina Supreme Court has been able to speculate that perhaps the solicitor desired to continue the case because he "may have concluded that another go at it *would not be worth the time and expense of another effort*" [emphasis added]. *State* v. *Klopfer*, 145 S. E. 2d 909, 910 (1966). This, however, far from excusing further delay by the solicitor tends only to suggest that the prosecution should have been dismissed.

There is no way fully to measure the prejudice sustained by Professor Klopfer, whether in terms of lost ability adequately to defend himself, personal anxiety respecting the specter of future prosecution, community stigma from an arrest and indictment he has had no reasonable chance to remove, or prejudice to his career. All that can be said with certainty is that the prejudice will increase with the passing of time, exactly as the solicitor's justification for delay has become even less convincing as time has passed.

Petitioner did not waive his right to a speedy trial. The record demonstrates that petitioner, through his counsel, made timely objection and took exception to the entry of *nol. pros.* with leave (R. 11-12).

Viewed alone, any one of these factors might not amount to unreasonable delay. But as an aggregate, they easily reach due process dimensions.

II.

The *nol. pros.* with leave violates due process in operating to punish the petitioner in the absence of a fundamentally fair trial.

Due process requires not merely that criminal trials must be conducted free of fundamental error, but that the accused must be given a reasonable opportunity to end the stigma and disabilities of arrest and indictment by establishing his innocence. Due process assures the accused the affirmative right to have a fair trial take place. It is obvious that the significant right to establish one's innocence may be eroded in direct proportion to the lapse of time between his arrest and his trial. Just as the ravages of time adversely affect the availability of the State's evidence and the State's witnesses against him, so they equally affect his ability to secure exoneration against the criminal charge as well as against the prospect of conviction. After sufficient time has gone by to enable the accused and the State to prepare for trial, further delay operates to their mutual disadvantage by atrophy of their evidence. The result is to increase the likelihood that no meaningful trial can be held and, correspondingly, that the accused will have to live out his life subjected to the dis-

abilities of an unresolved record of criminal arrest and indictment. Without the aid of this Court, petitioner is virtually certain to endure such oblique punishment. He has no means pursuant to any procedure in North Carolina either to bring his case to trial or to secure a dismissal of the indictment. No remedy exists to offset the solicitor's discretion to delay the trial indefinitely. Beyond that, the solicitor has failed to suggest any reason why further delay beyond two years is necessary or even consistent with any desire by him to prosecute the case. And beyond this, it is clear that but for the prosecution's power to hold the accused in limbo for the rest of his life, the accused would in fact already have been vindicated at law.

Petitioner was indicted for criminal trespass for having peacefully sought service in a place of public accommodation plainly within the meaning of the Civil Rights Act of 1964. 78 Stat. 241, Tit. II, §201(b)(2). Pursuant to this Court's decision in *Hamm* v. *City of Rock Hill*, 379 U. S. 306 (1964), he could not now be convicted of the offense for which he stands accused and indicted. The *Hamm* decision, moreover, occurred before the solicitor obtained a *nol. pros.* with leave in this case. It was therefore clear at the time not only that no additional time was required to prepare adequately the prosecution of this case which had already been tried once (before the *Hamm* decision), but that no subsequent prosecution could succeed. The effect of the *nol. pros.* with leave is therefore not only to deprive the accused of his opportunity to establish his innocence and to resolve the record of his arrest and indictment, but to deprive him of the certainty of vindication. The net effect of the proceedings below is to punish the petitioner

subliminally through the expedient of an unresolved record of arrest and indictment which he must carry with him for the rest of his life, unless this Court acts.

III.

The *nol. pros.* with leave, granted without reason in this case, represents a continuing *in terrorem* deterrent to the exercise of constitutionally protected rights of speech, assembly, association, and equal protection in North Carolina.

It is no secret that expressions in opposition to racial discrimination are unpopular with much of the white citizenry of the South. North Carolina makes it very easy for its local solicitor to discourage such expression. It has armed him with the discretionary *nol. pros.* with leave, thus empowering the solicitor to suspend indefinitely the trial of one who, such as Professor Klopfer, has been arrested and indicted while engaging in a locally unpopular, though constitutionally protected, form of conduct. The State also has empowered its solicitor, through this same procedure, to cause the protestant to be again arrested upon the same indictment as often as the solicitor wills, each time putting the accused to the burden of arranging bond and preparing his defense. It is not difficult to foresee that if petitioner again engages in a racial protest or, for that matter, in any form of expression or conduct disapproved of by the State or the solicitor, he might well be re-arrested upon the indictment now pending, once, twice, or many times, and gravely inconvenienced and embarrassed.

In light of Professor Klopfer's position as a member of a university faculty, such harassment would present a grave threat, jeopardizing his career as well as his standing and reputation in the community. The effect, therefore, is to force petitioner to choose between his career and effectively expressing his dissatisfaction with racial segregation. Neither the State nor its solicitor has the right to force so unconscionable a choice on one who would otherwise engage in a form of unpopular expression, unless the State can demonstrate some overriding, compelling interest. *N. A. A. C. P.* v. *Alabama,* 357 U. S. 449 (1958); *Bates* v. *City of Little Rock,* 361 U. S. 516 (1960). North Carolina's solicitor has failed in petitioner's case to show any State interest to be preserved by permitting petitioner's indictment to continue. It is especially doubtful in light of the effect that *Hamm* and the Civil Rights Act of 1964 would have upon a conviction that any reason to continue the indictment exists other than the deterrent effect it is bound to have upon petitioner's future conduct.

To the extent that the *nol. pros.* with leave empowers the solicitor to deter petitioner from again engaging in a racial protest, this procedure does not pass constitutional muster. If petitioner is ever again to feel free to express an unpopular belief in North Carolina, the indictment pending against him must be dismissed.

CONCLUSION

To safeguard petitioner's right to a fair and speedy trial as well as his right to express unpopular beliefs, this Court should grant the petition for certiorari and dismiss the indictment pending against petitioner pursuant to the discretionary *nol. pros.* with leave.

Respectfully Submitted,

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The attorneys for *amici* acknowledge the invaluable assistance of Mr. Steven Roth, a student at the Duke Law School.

APPENDIX

1. Thirty-eight constitutions provide, like the Sixth Amendment, that the accused shall enjoy the right to a speedy and public trial in all criminal prosecutions.

   Ala. Const. art. 1, §6; Alaska Const. art. 1, §11; Ariz. Const. art. 2, §24; Ark. Const. art. 2, §10; Cal. Const. art. 1, §13; Colo. Const. art. II, sec. 16; Conn. Const. art. 1, §9; Del. Const. art. 1, §7; Fla. Const. DR sec. 11; Ga. Const. art. 1, §2-105; Idaho Const. art. 1, §13; Ill. Const. art. 2, §9; Iowa Const. art. 1, §10; Kan. Const. B. of R., §10; Ky. Const. §11; La. Const. art. 1, §9; Me. Const. art. 1, §6; Md. Const. D. R. art. 21; Mich. Const. 1963 art. 1, §20; Minn. Const. art. 1, §6; Miss. Const. art. 3, §26; Mo. Const. art. 1, §18(a); Mont. Const. art. 3, §15; Neb. Const. art. 1, §11; N. J. Const. art. 1, par. 10; N. D. Const. art. 1, §13; Ohio Const. art. 1, §10; Okla. Const. art. 2, §20; Pa. Const. art. 1, §9; R. I. Const. art. 1, §10; S. C. Const. art. 1, §18; Tenn. Const. art. 1, §9; Tex. Const. art. 1, §10; Utah Const. art. 1, §12; Va. Const. art. 1, §8; Vt. Const. ch. I, art. 10; Wis. Const. art. 1, §7; Wyo. Const. art. 1, §10.

2. Six constitutions, not specifically guaranteeing the accused a speedy and public trial, state that justice shall be administered speedily and without delay. This, too, has been construed to afford the accused the right to a speedy trial.

   Ariz. Const. art. 2, §11 (But see appendix 1, supra); Ind. Const. art. 1, §12; Kan. Const. B. of R., §18 (But see Appendix 1, supra); Ore. Const. art. 1, §10; Wash. Const. art. 1, §10; W. Va. Const. art. III, §14.

3. Six states have no constitutional guarantee of a speedy trial.

Hawaii, Massachusetts, Nevada, New Hampshire, New York, North Carolina.

Three of these states have language in their constitutions similar to that of the Indiana constitution. (Appendix 2, Supra). Mass. Const. pt. 1, Art. XH, §12; N. H. Const. pt. 1, art. 14; N. C. Const. art. 1, §35. But thus far there have been no judicial decisions interpreting this to guarantee the right to a speedy trial.

4. Eleven states provide by statute that the accused shall enjoy the right to a speedy trial.

Ariz. Rev. Stat. Ann. art. 3, §13-161; Ark. Stat. Ann. tit. 43, §1703; Ga. Code Ann. ch. 27-6, §21-601; Idaho Code tit. 19, §3501; Ill. Rev. Stat. 1965 tit. 28, §103-5; Kan. Stat. Ann. §62-1431 et. seq.; Ann. Laws of Mass. tit. 277, §72; Mo. Stat. Ann. §545.890; Nev. Rev. Stat. §169.160; N. C. Gen. Stat. 15-10 (applying to felony offenses only); Okla. Stat. Ann. tit. 22, §13; Code of Law of S. C. tit. 17, §509 (felony); §510 (misdemeanor).

5. Approximately one-third of the States have abolished *nol. pros.* expressly by statute or have greatly restricted its entry by the prosecutor.

Cal. Pen. Code §1386; Idaho Code Ann. §19-3505; Iowa Code §795-5 (by implication); Minn. Stat. §631.21 (by implication); Mont. Rev. Code Ann. §94-9506; Nev. Comp. Laws Ann. §11198; N. Y. Crim.

Code §672; N. D. Rev. Code §29-1805; Okla. Stat. tit. 22, §816; Ore. Comp. Laws Ann. §26-2006; S. D. Com. Laws Ann. §4811; Utah Code Ann. §105-51-5; Wash. Rev. Stat. Ann. §14-2314 (by implication).

6. Thirteen States have placed sole discretion for the entry of *nol. pros.* in the court.

Ala. Code Ann. tit. 15, §257; Ark. Ann. Stat. §43-1230; Colo. Stat. Ann. c. 48 §463; Ga. Code Ann. §27-1801; Ind. Ann. Stat. 9-910; Ky. Rev. Stat. 455.070; Me. Rev. Stat. c. 79 §135; Mich. Comp. Laws §767. 29; Miss. Code Ann. §2566; Ohio Gen. Code Ann. §13437-32; Pa. Stat. Ann. tit. 19, §492; Tex. Stat., Code of Crim. Proc. art. 577; Wyo. Comp. Stat. Ann. §10-823.